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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,214	01/23/2004	Edward A. Zumbiel	RWZ/77	9137
26875	7590	01/06/2006		
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER DURAND, PAUL R	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/764,214	<b>Applicant(s)</b> ZUMBIEL ET AL.	
	<b>Examiner</b> Paul Durand	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 13, it is not clear to the examiner what the scope of "register" encompasses. The specification does not adequately define this term and only refers to registration during scoring of the film, not wrapping.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1-3,5,7,8 and 21 are rejected under 35 U.S.C. 102(a) as being anticipated by Rhodes et al. (US 6,631,803).

In regard to claims 1,3,8 and 21, Rhodes discloses the invention as claimed including producing a carton substrate 31, over wrapping the carton substrate with a film 29, such that the entire film registers with the carton, scoring a portion of the film proximate the convenience feature in the form of handles 26 and lid 22, wherein the

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scored portion of the film becomes part of the convenience feature when accessed by the user, erecting the carton, with the convenience features accessible to the user from the exterior of the carton, filling the carton with items "C", such that each of the items are substantially bounded by the carton (see entire document).

In regard to claim 2, Rhodes discloses the invention as claimed including a dispenser in the form of lid 22 and handle 26.

In regard to claim 5, Rhodes discloses the invention as claimed including the over wrap covering the entire carton.

In regard to claim 7, Rhodes discloses the invention as claimed including the convenience feature accessible from the outside of the carton, without removing any items.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6,9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhodes.

In regard to claim 6, Rhodes discloses the invention substantially as claimed except for the remoteness of the packaging location. However, the examiner takes Official Notice that it is well known in the art to provide a different location for filling a

carton, and another location for wrapping a carton for the purpose of increasing manufacturing throughput.

In regard to claims 9 and 10, Rhodes discloses the invention substantially except for the wrapping material having different colors of indicia and utilizing multiple rolls of material. However, it would have been an obvious matter of design choice to have provided a wrapping material having different colors of indicia and utilizing multiple rolls of material, since applicant has not disclosed that providing a wrapping material having different colors of indicia and utilizing multiple rolls of material solves any stated problem or is for any particular purpose and it appears the invention would do.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rhodes in view Littmann (US 5,229,180).

Rhodes discloses the invention substantially as claimed as applied to claim 1, except for the use of laser or die to score the package. However, Littmann teaches that it is old and well known in the art of packaging to provide a completely covered package with a scored film 10 with laser scoring 18 and metal strip 19 functioning as a die and proximate and aligned with a convenience feature in the form of reclosable tape 20 for the purpose of making a package easier to open (see Figs. 1,2 and C5,L40-47).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Rhodes with the scoring means as taught by Littmann for the purpose of forming an easy open and accessible package.

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8. Claims 1,2,5-7 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. (US 5,329,747) in view of Chapman et al (US 3,111,221).

In regard to claims 1 and 2, Williams discloses the invention as claimed including producing and erecting and filling a carton 10, with convenience feature in the form of handle 16, over wrapping the filled carton with shrink wrap (no number given), such that the film registers with a portion of the carton, and singly scoring a portion of the film proximate the convenience feature in the form of a cutout, which allows access to the convenience feature (see entire document). What Williams does not disclose is the use of a scored convenience feature comprised of multiple cuts. However, Chapman teaches that it is old and well known in the art of packaging to provide a scored openings 54 in a film 42, which may be scored before or after the film is applied to the grouped items 11-16, held together by spacer 34 for the purpose of allowing access to the convenience features 52 (see Fig.1 and C2,L3-67).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Williams with the scoring means as taught by Chapman for the purpose of allowing access to the convenience features.

In regard to claim 5, Williams discloses the invention as claimed including covering the entire carton 10 with the film (see Fig.1).

In regard to claim 7, Williams discloses the invention as claimed including accessing the convenience feature without removing any items from the carton.

In regard to claim 6, Williams discloses the invention substantially as claimed except for the remoteness of the packaging location. However, the examiner takes Official Notice that it is well known in the art to provide a different location for filling a carton, and another location for wrapping a carton for the purpose of increasing manufacturing throughput.

In regard to claims 9 and 10, Williams discloses the invention substantially as claimed including a wrapping film 26 fed from a single roll 35. What the modified invention of Williams does not disclose is the wrapping material having different colors of indicia and utilizing multiple rolls of material. However, it would have been an obvious matter of design choice to have provided a wrapping material having different colors of indicia and utilizing multiple rolls of material, since applicant has not disclosed that providing a wrapping material having different colors of indicia and utilizing multiple rolls of material solves any stated problem or is for any particular purpose and it appears the invention would do.

In regard to claims 11 and 12, Williams discloses the invention as claimed including scoring the film after it is on the carton (see C3,L7-20).

9. Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. in view of Killy (US 4,396,143).

Williams discloses the invention substantially as claimed as applied to claim 1, except for the use of a carton with scored convenience features, which also substantially encloses the contents. However, Killy teaches that it is old and well known in the art of packages to provide a case 10, with convenience features in the form of

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handles 24 and dispenser 50, filling the case with beverages 52, such that each beverage is bounded by the carton for the purpose of forming a case and allowing access to it (see Figs. 1,2 and C2,L48 – C3,L420).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Williams with the carton as taught by Killy for the purpose of forming an easy open and accessible package.

10. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. in view Littmann.

Williams discloses the invention substantially as claimed as applied to claim 1, except for the use of laser to score the package. However, Littmann teaches that it is old and well known in the art of packaging to provide a completely covered package with a scored film 10 with laser scoring 18 and metal strip 19 functioning as a die and proximate and aligned with a convenience feature in the form of reclosable tape 20 for the purpose of making a package easier to open (see Figs. 1,2 and C5,L40-47).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Williams with the scoring means as taught by Littmann for the purpose of forming an easy open and accessible package.

11. Claims 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhodes in view of Littmann.



In regard to claims 13,15 and 16, Rhodes discloses the invention as claimed including producing a carton substrate 31 over wrapping the carton substrate, with a film 29, such that the entire film registers with the carton, scoring a portion of the film proximate the convenience feature in the form of handles 26 and lid 22, wherein the scored portion of the film becomes part of the convenience feature, as it laminated on the substrate, the convenience features capable of being accessed by the user any of the contents, erecting the carton with the convenience features, filling the carton with items "C", such that each of the items are substantially bounded and concealed by the carton (see entire document). What Rhodes does not disclose is the use of laser or die to score the package. However, Littmann teaches that it is old and well known in the art of packaging to provide a completely covered package with a scored film 10 with laser scoring 18 and metal strip 19 functioning as a die and proximate and aligned with a convenience feature in the form of reclosable tape 20 for the purpose of making a package easier to open (see Figs. 1,2 and C5,L40-47).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Rhodes with the scoring means as taught by Littmann for the purpose of forming an easy open and accessible package.

In regard to claim 14, the modified invention of Rhodes discloses the invention substantially as claimed except for the remoteness of the packaging location. However, the examiner takes Official Notice that it is well known in the art to provide a different

location for filling a carton, and another location for wrapping a carton for the purpose of increasing manufacturing throughput.

In regard to claims 17 and 18, Rhodes discloses the invention substantially except for the wrapping material having different colors of indicia and utilizing multiple rolls of material. However, it would have been an obvious matter of design choice to have provided a wrapping material having different colors of indicia and utilizing multiple rolls of material, since applicant has not disclosed that providing a wrapping material having different colors of indicia and utilizing multiple rolls of material solves any stated problem or is for any particular purpose and it appears the invention would do.

12. Claims 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams Jr. in view of Killy and in further view of Littmann.

In regard to claims 13 and 16, Williams discloses the invention as claimed including producing and erecting and filling a carton 10, with convenience feature in the form of handle 16, over wrapping the filled carton with shrink wrap, while covering the entire carton 10 with the film (no number given), and singly scoring a portion of the film proximate the convenience feature, with the scored portion of the film becoming part of the convenience feature by being located directly adjacent and movable with the convenience feature which allows access to the convenience feature (see entire document). What Williams does not disclose is the use of a formed carton, which is filled and has the shrink-wrapped scored. However, Killy teaches that it is old and well known in the art of packages to provide a case 10, with convenience features in the form of handles 24 and dispenser 50, filling the case with beverages 52, such that each

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beverage is bounded by the carton for the purpose of forming a case and allowing access to it (see Figs. 1,2 and C2,L48 – C3,L420. Furthermore, Littmann teaches that it is old and well known in the art of packaging to provide a completely covered package with a scored film 10 with laser scoring 18 and metal strip 19 functioning as a die and proximate and aligned with a convenience feature in the form of reclosable tape 20 for the purpose of making a package easier to open (see Figs. 1,2 and C5,L40-47).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Bernard with the carton as taught by Killy and the scoring means as taught by Littmann for the purpose of forming an easy open and accessible package.

In regard to claim 14, the modified invention of Williams discloses the invention substantially as claimed except for the remoteness of the packaging location. However, the examiner takes Official Notice that it is well known in the art to provide a different location for filling a carton, and another location for wrapping a carton for the purpose of increasing manufacturing throughput.

In regard to claim 15, Williams discloses the invention as claimed including accessing the convenience feature without removing any items from the carton.

In regard to claims 17 and 18, the modified invention of Williams discloses the invention substantially as claimed including a wrapping film 26 fed from a single roll 35. What the modified invention of Bernard does not disclose is the wrapping material having different colors of indicia and utilizing multiple rolls of material. However, it would have been an obvious matter of design choice to have provided a wrapping

material having different colors of indicia and utilizing multiple rolls of material, since applicant has not disclosed that providing a wrapping material having different colors of indicia and utilizing multiple rolls of material solves any stated problem or is for any particular purpose and it appears the invention would do.

In regard to claims 19 and 20, Williams discloses the invention as claimed including scoring the film after it is on the carton (see C3,L7-20).

### ***Response to Arguments***

13. Applicant's arguments filed 10/7/2005 have been fully considered but they are not persuasive.

Applicant's arguments for independent claims 1 and 13 focus around the registration of the wrapper, as well as a lack of motivation to combine the cited references. The examiner does not agree with these arguments.

First the examiner cannot determine the scope of registering the film with a portion of the carton, as there appears to be no support in the specification for this limitation. The only reference to the term "registration" appears to be to the scoring of the film and not to wrapping. Second, given the broadest reasonable interpretation of this limitation, the examiner asserts that this can also encompass the film being in contact with Williams or Chapman, or if applicant is attempting to use registration to reference the application of the film to the substrate prior to the erection of the container, the newly supplied reference of Rhodes is deemed to read on the claim.

Furthermore, in response to the applicant's argument that there is not motivation to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the primary reference and the secondary teachings are all focused on packaging items inside a box, which is then subsequently wrapped, the secondary teachings of Chapman was chosen to show applicant that it is well known to score a surface as opposed to a cutout as disclosed in Williams. Further, Littmann is being used to show applicant that it is well known to laser score a package to increase the ease of opening a package, by weakening the seal area.

If applicant is attempting to further the argument by asserting the references of Williams, Chapman, Killy or Littmann could not be incorporated together, the examiner asserts that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Therefore for the reasons indicated above, the rejection is deemed proper.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

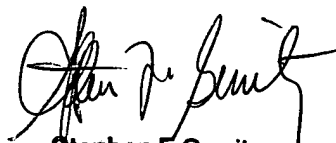
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand  
December 29, 2005



**Stephen F. Gerrity**  
**Primary Examiner**